

OGC HAS REVIEWED.

16 March 1981

STATINTL

MEMORANDUM FOR: [REDACTED]
NFAC Admin

FROM: [REDACTED] STATINTL
Office of General Counsel

SUBJECT: Continuing Validity of OGC 78-8141, Acceptance
of Transportation, Meal and Lodging Expenses
by Agency Employees from Private Organizations

STATINTL

1. You have provided me with a copy of an opinion, dated 7 December 1978, from [REDACTED] of this Office to the Administrative Officer/DCI. You have asked whether or not the advice contained in paragraph 6 thereof concerning the acceptance of transportation, lodging or meals from private organizations is still valid.

2. I have^o reviewed the opinion, in particular, paragraph 6 thereof. In my opinion, the advice contained therein is still valid and may be relied upon by your office in making decisions in this area. If, however, a case arises which cannot be resolved by resort to that advice, please feel free to contact me or Steve Hermes of this Office. STATINTL

STATINTL

cc:

[REDACTED]
[REDACTED], OGC
[REDACTED], OGC
[REDACTED] NFAC ✓

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☐ INTERNAL

☐ CONFIDENTIAL

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

STATINTL

FROM:

OGC

7 C 36, Hqs.

EXTENSION

6418

NO.

DATE

17 March 1981

TO: (Officer designation, room number, and building)

STATINTL

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

Academic Coordinator

2.

3.

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15.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

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Request for Permission to Attend A Conference

STATINTL

EXTENSION

NO.

OGC 7C32

7231

DATE

12 April 1979

1. (Officer designation, room number, and
wing)

DATE

OFFICER'S
INITIALSCOMMENTS (Number each comment to show from whom
to whom. Draw a line across column after each comment.)

STATINTL

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1. S. 2
R/Admin. Staff
4E29 Hqs.

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This office has no legal objection to the acceptance of payment of travel, substance, and other expenses as requested if the proper determinations identified in paragraph 10 of the attached memorandum (OGC 78-8141) can be made. Our review of the facts suggest that the requisite conditions are present. Subject's per diem should, of course, be adjusted to reflect these payments.

Thanks
Gerry G/OER

Hermu has the
rup now

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(Unclassified when separated from attachment)

610 USE PREVIOUS EDITIONS

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OGC 78-8141

7 December 1978

S

MEMORANDUM FOR: Administrative Officer/DCI

FROM: [REDACTED]

STATINTL: Assistant General Counsel

SUBJECT: Request for Legal Opinion re Acceptance of Quarters or Meals from a Foreign Government or Private Organization. STATINTL

REFERENCE: Memo to OGC fm [REDACTED] AD/DCI, dtd 21 Nov 78, Same Subj.

1. This is in response to the six questions you addressed to this Office relating to the acceptance by an Agency employee of travel and subsistence from a foreign government or a private organization. Specifically you asked our opinion concerning the legality of:

- a. Accepting quarters or meals provided by a foreign government at no cost to the traveler or the U.S. Government.
- b. Is there a legal distinction between accepting quarters belonging to a foreign government vs. permitting a foreign government to pay a commercial hotel bill for a U.S. Government employee?
- c. Accepting payment of hotel and meal costs by a private organization which has requested an address or presentation by the DCI or DDCI.
- d. Accepting hotel services or meals from associations and organizations with whom the Agency has no financial relationship but who do provide information or other services gratuitously.
- e. Accepting any of the foregoing for the entire party traveling with the DCI or DDCI, including wives or other family members.
- f. Does acceptance of these kinds of gratuities constitute a "gift" of any kind and, if so, must they be reported? To whom? (U)

DERIVATIVE COPY 035774

DECLASSIFIED ON 16 March 96

DERIVED FROM HR 20-62 and

HR 18-20(4)

a. There is no legal objection if the transportation, meals or lodging, paid for or provided, is incurred as a result of travel taking place entirely outside the United States and refusal of such gifts would cause offense or embarrassment to the donor, would adversely affect the foreign relations of the United States, or would interfere with the official relationship between the employee and the foreign government to such a degree as to result in harm to operations.

b. There is no distinction that we are aware of.

c. The acceptance of food or refreshments from a private organization is permissible if there is no contractual, business, or financial relationship with the Agency and acceptance does not result in or give the appearance of:

- (1) using public office for private gain;
- (2) giving preferential treatment to any organization or person;
- (3) impeding government efficiency or economy;
- (4) losing complete independence or impartiality of action;
- (5) making a government decision outside official channels; or
- (6) affecting adversely the confidence of the public in the integrity of the government.

The acceptance of travel, subsistence or other expenses (other than those above) incident to the attendance of a meeting or speaking engagement at the request of a private organization is prohibited unless:

- (1) The organization qualifies as a tax exempt organization under Federal tax laws; and
- (2) the meeting or engagement is for training or will contribute to improving the conduct, supervision, or management functions or activities of the Agency.

d. The comments in paragraph c above are equally applicable here. While the existence of a financial, business or contractual relationship with a private organization would clearly prohibit acceptance of any payments, some lesser type of relationship may not be objectionable. Each relationship must be examined on a case-by-case basis,

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However, to determine if the relationship, no matter how slight, might adversely impact on the objectivity of the employee or otherwise create the appearance of impropriety.

e. The statutory and regulatory authorities governing acceptance of gifts either define the word "employee" in such a way that it includes spouses and members of the immediate family or household, or otherwise provides that a gift to a member of the immediate family or household is to be considered a gift to the employee. The considerations discussed in this memorandum are, therefore, equally applicable to spouses and dependents unless specifically noted otherwise.

f. The payment of transportation, lodging and subsistence expenses would constitute a gift and must, in accordance with HR 20-6(e), be reported to the Director of Personnel. Payments received under 5 U.S.C. § 4111 incident to training (or meetings) at non-CIA facilities, must be reported to the Director of Training in accordance with HR 18-8c(4)(d). One would assume that this regulation was also intended to cover payments received for attendance at non-training meetings identified in 5 U.S.C. § 4110. (C)

FOREIGN GIFTS

3. The constitution of the United States provides that:

...no Person holding any...Office of Profit or Trust... shall, without the Consent of Congress, accept any present, Emolument...of any kind whatever from any... foreign State....

Congress, in 5 U.S.C. § 7342, has consented to acceptance of certain gifts by Federal employees including:

...gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency. (Emphasis added.)

(U)

4. Pursuant to a Presidential delegation of authority contained in Executive Order 11320, the Secretary of State has promulgated implementing regulations found at 22 C.F.R. part 3. Agency regulations found at HR 20-6d(4) and (5) closely parallel those promulgated in 22 C.F.R. and state in pertinent part:

from an agent, foreign officer, or foreign government. Foreign contacts will be discouraged, insofar as it is feasible, from presenting gifts to Agency personnel.

(5) Employees will accept gifts only when, in their best judgment, refusal would interfere with the official relationship between the employee and the agent, foreign officer, or foreign government to such a degree as to result in harm to operations. Gifts having retail value not exceeding \$50 in the United States may be retained by the employee, but a gift exceeding \$50 in value is deemed to have been accepted in behalf of the United States and will be deposited by the donee for use and disposal as the property of the United States. (C)

5. Based on these two authorities, it is our opinion that that acceptance of transportation, meals or lodging expenses provided by a foreign government and incurred during travel taking place entirely outside the United States may be accepted if (1) payment for these items was not solicited by the employee; (2) acceptance is appropriate and consistent with the interests of the United States; and (3) refusal would (a) interfere with the official relationship between the employee and the foreign government to such a degree as to harm operational activities, (b) cause offense or embarrassment to the donor, or (c) adversely affect the foreign relations of the United States. Further, since the term "employee" is defined in 5 U.S.C. § 7342 to include the spouses of an individual and any dependents, expenses may be accepted on their behalf when circumstances permit acceptance by the employee. (U)

ACCEPTANCE OF TRANSPORTATION, LODGING OR MEALS FROM PRIVATE ORGANIZATIONS

6. The acceptance of expenses for transportation, meals and lodging from private organizations for speaking engagements or similar activities is governed by criminal provisions contained in 18 U.S.C. § 201 and Standards of Ethical Conduct for Government Officers and Employees promulgated by the President in Executive Order 11222 (1971). The pertinent Executive Order guidelines, which generally parrot the criminal provisions, are contained in section 210 and state:

(a) Except in accordance with regulations issued pursuant to subsection (b) of this section, no employee shall solicit or accept, directly or

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- (1) has, or is seeking to obtain, contractual or other business or financial relationships with his agency;
- (2) conducts operations or activities which are regulated by his agency; or
- (3) has interests which may be substantially affected by the performance or nonperformance of his official duty.

(b) Agency heads are authorized to issue regulations, coordinated and approved by the Civil Service Commission, implementing the provisions of subsection (a) of this section and to provide for such exceptions therein as may be necessary and appropriate in view of the nature of their agency's work and the duties and responsibilities of their employees. For example, it may be appropriate to provide exceptions... (2) permitting acceptance of food and refreshments available in the ordinary course of a luncheon or dinner or other meeting or on inspection tours where an employee may properly be in attendance;

* * *

(c) It is the intent of this section that employees avoid any action, whether or not specifically prohibited by subsection (a), which might result in, or create the appearance of--

- (1) using public office for private gain;
- (2) giving preferential treatment to any organization or person;
- (3) impeding government efficiency or economy;
- (4) losing complete independence or impartiality of action;
- (5) making a government decision outside official channels; or
- (6) affecting adversely the confidence of the public in the integrity of the government. (Emphasis added.) (U)

7. Pursuant to part VII of the order the Civil Service Commission has issued implementing regulations found at

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 section 735.202, HR Supplement 996-1. HR 20-6(d)(3) provides
 in pertinent part:

(a) Except as provided in paragraphs (b) and (f) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with his agency;

(2) Conducts operations or activities that are regulated by his agency; or

(3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

The Agency's implementing regulation contained at HR 20-6(d)(3) closely parallels 735.202(a). Subparagraph (b) of 735.202 sets forth the exceptions where a gift or gratuity may be accepted and states in pertinent part:

(b) Agency regulations implementing paragraph (a) of this section may provide for such exceptions as may be necessary and appropriate in view of the nature of the agency's work and the duties and responsibilities of the employees. Appropriate exceptions which may be made by an agency include, but are not limited to, those that:

* * *

(2) Permit acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;... (C)

8. Agency regulations do not, however, contain any specific provisions providing for the acceptance of food and refreshments of nominal value. Arguably, HR 20-6(d)(3) impliedly authorizes the acceptance of such items in circumstances other than those prohibited by section 210(c) of the Executive Order. Acceptance of expenses for other than food and refreshments of nominal value is permitted only under the circumstances described in paragraph 9 below. In accordance with HR 20-6(d)(3) gifts of food or refreshments to a member of the immediate family or household of an employee are considered gifts to the employee and subject to all applicable restrictions. (C)

To the extent authorized by regulations of the President, contributions and awards incident to training in non-Government facilities, and payment of travel, subsistence, and other expenses incident to attendance at meetings, may be made to and accepted by an employee, without regard to section 209 of title 18, if the contributions, awards, and payments are made by an organization determined by the Secretary of the Treasury to be an organization described by section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26. (Emphasis added.) (U)

10. The Civil Service Commission pursuant to a delegation of authority contained in section 401 of Executive Order 11248 (1967) has promulgated implementing regulations at subpart G, part 410, Book III, FPM Supplement 990-1. Sections 410.702 through 410.704 are pertinent to our inquiry and state:

Sec. 410.702 Authority of agencies to authorize acceptance. The head of an agency or a representative designated by him for this purpose under section 410.703 may authorize in writing an employee of his agency to accept a contribution or award (in cash or in kind) incident to training in non-Government facilities or to accept payment (in cash or in kind) of travel, subsistence, and other expenses incident to attendance at meetings if the contribution, award, or payment is made either by an organization determined by the Secretary of the Treasury to be an organization described in section 501(c)(3) of title 26, United States Code, which is exempt from taxation under section 501(a) of that title, or by an organization to which the prohibitions in section 209 of title 18, United States Code, do not apply, and if, in the judgment of the head of the agency or his designated representative, the following conditions are met:

- (a) The contribution, award, or payment is not a reward for services to the organization prior to the training or meeting; and
- (b) Acceptance of the contribution, award, or payment:

(1) Would not reflect unfavorably on the ability of the employee to carry out his official duties in a fair and objective manner;

(2) Would not compromise the honesty and integrity of Government programs or of Government employees and their official actions or decisions;

(3) Would be compatible with the Code of Ethics for Government Service expressed in House Concurrent Resolution 175, 85th Congress, 2d Session; and

(4) Would otherwise be proper and ethical for the employee concerned under the circumstances in his particular case. (Emphasis added.)

Sec. 410.703. Delegation of authority to authorize acceptance. The head of an agency may designate a representative to act for him in authorizing the acceptance of contributions, awards, and payments under section 410.702. Delegation of authority to act in this matter shall be held to as high an administrative level as practicable to assure that the policies of the agency head are reflected in each decision, and that there is full evaluation of the circumstances of each case in the light of the conditions set forth in section 410.702.

Sec. 410.704. Acceptance of contributions, awards, and payments. An employee may accept a contribution, award, or payment (whether made in cash or in kind) that falls within the scope of this subpart only with specific written authorization granted under section 410.702. (U)

11. The pertinent CIA training regulation contained at HR 18-8b(4) discusses only the receipt of "any contribution, award, or payment made by an outside source to cover expenses incident to the training" and not payments received for the attendance at non-training meetings. The acceptance of payment of expenses for the attendance at certain non-training meetings would seem to be permissible in view of language contained in 5 U.S.C. § 4110, which states:

Appropriations available to an agency for travel expenses are available for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities. (Emphasis added.)

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When pay Authority,
5 U.S.C. § 4111(b) provides that the amount that otherwise
would be payable by the Government on account of the employees'
travel or subsistence are to be reduced by the contributions
made by the organization covering the same type of expenses. (C)

12. Finally, this Office would strongly recommend a
careful examination of even those cases where acceptance of
payments for travel, lodging or meals would appear to be
permissible. The Presidential order directing that Government
employees avoid even the appearance of impropriety combined
with our Agency's responsibility to produce an objective and
unbiased intelligence product demands, in our view, the
exercise of extreme caution in this area. This Office will,
of course, be available to assist you in specific fact
situations as they may occur. STATINTL

JMH:nl

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